Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 216 of 2002

The New India Assurance Company Ltd.
Through Divisional Manager,
Divisional office, Nainital Road, Opp.
Judges Court, Haldwani, District – Nainital

…….. Appellant

Versus

(1) Smt. Muni Devi W/o of late Kailash Chandra,
(2) Bishan Datt,
(3) Smt. Basanti Devi W/o Bishan Datt,
Residents of Village –Gairlekha, P.O. Kapkoti,
Tehsil & District Bageshwar,
(4) Anand Singh Bagadwal S/o Sri Kishan Singh Bagadwal,
R/o Malla Gorakhpur, Canal Road, Ekta Farm,
Haldwani, District- Nainital .

…… Respondents.

Sri Tanveer Alam Khan, learned counsel for the appellant,
Sri Harsh Vardhan Shah, learned counsel for the respondents.

Date :25th Aug.,2004

Hon'ble P.C. Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Opp.party/appellant-New India Assurance Company against the judgment and order dated 14.08.2002 passed by Motor Acident Claims Tribunal /District Judge, Almora in Motor Accident Claim Case No. 37 of 1999, by which the claim petition has been decreed for a sum of Rs. 3,49,500/- as compensation against the appellant.

2- Brief facts giving rise to this appeal are that on 12.10.1999, deceased Kailash Chandra was travelling in KMOU Bus No. UP-22-7387. When the bus reached near Hawalbagh, it fell down in a deep khud due to rash and negligent driving of the driver thereby Kailash Chandra

received grievous injuries and died on the spot. The deceased was shopkeeper and was earning R.s 3800/- per month. The claimants, who are dependents of the deceased, filed the claim petition for compensation due to death of Kailash Chandra in the alleged accident.

3- The opposite parties contested the claim petition by filing their written statements separately. The opposite party No. 1- Anand Singh Bgarawal alleged that the bus in question was owned by him and it was insured with New India Assurance Company. The Opp. party No. 2- Insurance Company also denied all the allegations of the petition but admitted that the vehicle in question was insured with it. The Tribunal, on the pleadings of the parties, framed necessary issues and after scrutinizing the evidence allowed the claim petition of the claimants.

4- The learned counsel for the appellant contended that neither the claimant nor the insured of the vehicle has produced the driving licence before the Tribunal and the Tribunal has committed manifest error in fixing liability to the pay the compensation on the Insurance Company. We have gone through the impugned judgment of the Tribunal. Issue No. 4 is related to this question which reads as under:-

"Whether the driver of the vehicle involved in the accident had a valid driving licence on the date of accident? If so, its effects?

5- The learned Tribunal while deciding issue Nos. 1, 3 & 4 together gave its finding regarding valid driving licence that the driving licence of the driver has not been filed, but it has not been pressed seriously by the Opp. party- Insurance Company during the argument. We hold that even if the driving licence has not been produced or it was fake then on that count also the Insurance Company

cannot be absolved from its liability to pay the compensation. We are also of the opinion that the Insurance Company may, if it so desires, can take recourse to recover the compensation amount from the insured/owner of the vehicle in view of the law laid down by the Apex Court in the case ***National Insurance Company Limited versus Swaran Singh and others,*** reported in ***(2004) 3 Supreme Court Cases, page 297*** in which the Apex Court has elaborately discussed all the relevant provisions of Section 149(2)(a)(ii), 149(7), 168 and 174 of the Motor Vehicles Act, 1988 and paragraph 110 of the said case is fully applicable to the contention as raised by the learned counsel for the appellant. While dealing with the relevant provisions of law, as may be applicable to the facts of the present case, the Hon'ble Supreme Court has held in paras 71 and 110-The provisions of sub – sections (4) and (5) of Section 149 of the Act, may be considered as the liability of the Insurer to satisfy the decree, at the first instance–The provisions contained in sub-section (4) with 'proviso' thereunder and sub-section (5), which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance, on behalf of the insured, can be taken recourse of by the Tribunal and be extended to the claims and the defences of the insurer against the insured, by relegating them to the remedy before regular court, in cases, where on given facts and circumstances, adjudication of their claims inter se might delay the adjudication of the claims of the victims.

6- Following the ratio of the pronouncement of the Apex Court, we are of the opinion that the appellant –New India Insurance Company must first satisfy the award

before the learned Tribunal and then can file its objection , if it so desires, before the executing court for redressal of its grievances about the dispute between the insurer and the insured by that court/ tribunal in accordance with the provisions of the Act. However, nothing has been shown to us on behalf of the appellant- Insurance Company so as to warrant any interference with findings arrived at by the learned Tribunal in the case under appeal.

7- Accordingly, the appeal fails on merit.

8- The appeal is disposed of with the aforesaid observations. No order as to costs. The amount, if deposited in the appeal in this Court, shall be remitted to the Motor Accident Claims Tribunal concerned within a period of three months from today.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh